



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyaguthi v Njiru (Civil Appeal E368 of 2022)  
[2024] KEHC 4023 (KLR) (Civ) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4023 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E368 OF 2022**

**DAS MAJANJA, J**

**APRIL 24, 2024**

**BETWEEN**

**JOHN MAINA NYAGUTHI ..... APPELLANT**

**AND**

**FRANCIS MBUGUA NJIRU ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. B. J. Ofisi SRM/Adjudicator dated 18th May 2022 at the Small Claims Court at Milimani, Nairobi SCC No. E136 of 2022)*

**JUDGMENT**

1. Before the Small Claims Court, the Respondent filed suit claiming Kshs. 416,474.00 being repair costs for his motor vehicle registration number KCD F which was damaged as a result of an accident that took place on 21.01.2019 along the Northern Bypass, Nairobi involving the Appellant's motor vehicle registration number KCK J. After hearing the matter, the Adjudicator apportioned liability at 80:20 against the Appellant thus precipitating this appeal.
2. The Appellant appeals against the trial court's finding on liability on the basis that the finding was not founded on the evidence. The finding of the Adjudicator was as follows:

The Police Abstract and CW2 confirmed that motor vehicle registration number KCD F is to blame for occurrence of the accident however, from the evidence adduced, negligence had partially been proved against the claimant's agent. Based on the oral documentary evidence adduced by the parties, I apportion liability in the ratio 80:20 in favour of the Claimant against the Respondent.

3. At the trial, the Respondent called three witnesses while the Appellant called two witnesses. As shown in the above extract from the judgment, the Adjudicator did not analyse or otherwise engage with the



testimonies and evidence of all the witnesses in order to come to a conclusion on liability. It is trite that a court must give reasons for its decision (see *Judicial Service Commission v Ndururi* [2021] KECA 365 (KLR)). Further, the Adjudicator failed to deal with the Appellant’s counterclaim seeking Kshs. 927,270.00 on account of repair costs to his vehicle. This constitutes a grave error on the part of the Adjudicator which entitles this court to intervene.

4. This court’s jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act*, 2016 (“SCCA”) which provides that ‘A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.’ A court limited to matters of law is not permitted to substitute the Subordinate Court’s decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
5. It is clear that the Adjudicator’s conclusions on liability which are devoid of reasons fall within the rubric of “matters of law”. While in an ordinary appeal, the court would re-evaluate the facts and come to its own conclusions, it cannot do so in this case. A finding on liability by this court may prejudice either party’s right of appeal as there is no appeal from this court to the Court of Appeal. The proper direction then is to order a re-trial of the matter.
6. I allow the appeal and direct re-trial of the matter before an Adjudicator other than Hon. B. J. Ofisi. The time for resolution of the matter shall start running from the date of the first mention before the Subordinate Court.
7. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**D. S. MAJANJA**

**JUDGE**

C. W. Ngala and Company Advocates for the Appellant.

Samuel Gitonga and Associates Advocates for the Respondent.

